

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF PUERTO RICO  
3

4                   JAVIER MEDINA BENCÓN,  
5

6                   Plaintiff  
7

v.  
8

PUERTO RICO ELECTRIC POWER  
9                   AUTHORITY, et al.,  
10

Defendants

CIVIL 03-2039 (SEC) (JA)

11                   MEMORANDUM ORDER  
12

13                  This matter is before the court on motion for summary judgment filed by  
14 defendants the Puerto Rico Electric Power Authority (hereinafter “PREPA”) and  
15 Héctor Rosario, Tomás Candelaria Nieves, Nixa Hernández Gutiérrez, César González  
16 González and Iván Torres Torres (collectively “defendants”) in their individual  
17 capacities, on July 4, 2005. (Docket No. 41.) A response in opposition to summary  
18 judgment was filed by plaintiff on July 28, 2005. (Docket No. 47.) The defendants  
19 filed a reply to Medina’s opposition on September 6, 2005. (Docket No. 58.) Medina  
20 then submitted a sur-reply on September 23, 2005. (Docket No. 63.) After  
21 considering the evidence in the record, the applicable law and for the reasons set  
22 forth below, defendants’ motion for summary judgment will be GRANTED.  
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24                  Plaintiff Javier Medina Bencón (hereinafter “Medina”) brought this action  
25 under the Civil Rights Act of 1871, 42 U.S.C. § 1983 and § 1988 and for violation of  
26 his rights to freedom of speech and to due process of law, protected by the First and  
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3 Fourteenth Amendments of the United States Constitution. Medina also invokes this  
4 court's supplemental jurisdiction, 28 U.S.C. § 1337, to bring claims under the  
5 Puerto Rico Constitution and Retaliation Against Public Employees Law, P.R. Laws  
6 Ann. tit. 1, § 601, et seq.; Puerto Rico's Wrongful Termination Law, Act No. 80 of  
7 May 30, 1976, as amended, P.R. Laws Ann. tit. 29, § 185a et seq.; and article 1802  
8 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31, § 5141.  
9

10 Plaintiff seeks injunctive relief against the defendants for them to immediately  
11 cease their unconstitutional and illegal practices and to reinstate Medina to all of his  
12 duties as supervisor for the Energy Illegal Appropriation Division in the Arecibo  
13 area. Plaintiff also requests compensatory and punitive damages.  
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15 Plaintiff has worked at the Puerto Rico Electric Power Authority (PREPA), a  
16 public corporation, in a management career position as a supervisor for the Energy  
17 Illegal Appropriation Division in the Arecibo Area, for the past nine years. Since  
18 March, 2001, plaintiff has denounced irregularities in the use of the electrical power  
19 by clients who use home made devices to get electricity without paying the proper  
20 amount or any amount. Some of the alleged clients involved in this illegal practice  
21 were members of the Popular Democratic Party, which won the general election in  
22 November 2000 and to which defendants owe their position at PREPA.  
23

24 On or about October 1, 2002, plaintiff went to the Governmental Ethics Office  
25 to further denounce the illegal acts that were taking place at the Arecibo Office of  
26 PREPA. His last denouncing of such illegal practices made by influential clients in  
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3 the Arecibo and Utuado area was on January 23, 2003. In the complaint, plaintiff  
4 claims that following his denouncing of the illegal conduct, he was subjected to an  
5 adverse labor environment by defendants Candelaria, Hernández, González and  
6 Torres. According to the complaint, Medina was divested of his duties and was  
7 subject to retaliatory acts such as deprivation of his parking space and substantial  
8 reductions in Medina's per diem rate. Plaintiff further alleges that he went to the  
9 Governmental Ethics Office to further denounce the illegal acts that were taking  
10 place at PREPA. The next day, he was forbidden to use his personal car to perform  
11 his remaining duties contrary to what had been the practice up to that time.

12 On January 27, 2003, plaintiff allegedly was called to a meeting with  
13 defendants Candelaria and Hernández in which they threatened Medina with filing  
14 charges in order to terminate him. They called him a liar on several instances. On  
15 February 4, 2003, defendant Tomás Candelaria wrote a letter to plaintiff in which  
16 he explicitly forbade him from working extra hours, without giving any reason.  
17 Finally, on February 12, 2003, defendant Candelaria wrote to Medina forbidding  
18 him to leave the office without the permission of defendant Hernández. This  
19 practice and procedure, Medina alleges, was never applied nor informed to him  
20 before.

21 As a result of these actions taken by defendants, Medina asserts that he was  
22 deprived of his entitlement to the functions and responsibilities at PREPA as the  
23 supervisor for the Energy Illegal Appropriation Division in the Arecibo area, a career  
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3 position in which he claims a property interest. It is Medina's contention that he  
4 continues to be isolated and humiliated by defendants in a continuous fashion in  
5 violation of his constitutional rights.  
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7 It is defendants' contention that they are not liable in their individual capacity  
8 for their lack of personal involvement in the arguable violation of plaintiff's rights.  
9 They further submit that there were no such "retaliatory" actions on their part since  
10 all the alleged acts were taken in accordance with newly implemented rules in  
11 PREPA's best interest in order to maximize the production and efficiency of the  
12 office and lower costs. They also claim that those actions were made prior to  
13 Medina's complaint, that they did not even know about the complaint filed until  
14 much later. Therefore, PREPA and co-defendants, Héctor Rosario, Tomás  
15 Candelaria, Nixa Hernández, César González and Iván Torres, move for summary  
16 judgment and dismissal of plaintiff's claim in its entirety.  
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19 A similar, if not identical, matter was previously addressed by me in a case  
20 filed by a fellow co-worker, Wilson Pérez-Ortiz, against the same defendants. The  
21 two parallel actions involving identical claims arising out of the same facts were filed  
22 on September 24, 2005. In both cases defendants moved for summary judgment.  
23 The case of Pérez-Ortiz v. PREPA, Civil No. 03-2040, was referred to me for a report  
24 and recommendation on the summary judgment issue on April 4, 2005. I issued a  
25 report recommending that summary judgment be granted on April 15, 2005. On  
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3 May 3, 2005 the district court adopted the unopposed report and recommendation,  
4 dismissing the complaint in its entirety.  
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6 Local Rule 56 requires that the moving party seeking summary judgment  
7 provide the court with a list of uncontested facts on which it relies, and that the  
8 non-moving party include a “a separate, short, and concise statement of the  
9 material facts. . . .” “This ‘anti-ferret’ rule aims to make the parties organize the  
10 evidence rather than leaving the burden upon the district judge.” Alsina-Ortiz v.  
11 LaBoy, 400 F.3d 77, 80 (1<sup>st</sup> Cir. 2005). “[When] the party opposing summary  
12 judgment fails to comply, the rule permits the district court to treat the moving  
13 party’s statement of facts as uncontested.” Id. (citing Cosme-Rosado v. Serrano-  
14 Rodríguez, 360 F.3d 42, 46 (1<sup>st</sup> Cir. 2004)). Additionally, the non-moving party  
15 cannot simply “dispense with the requirements of the rule by stating general  
16 objections to defendant’s proposed facts.” García Sánchez v. Román Abreu, 270 F.  
17 Supp. 2d 255, 259 (D.P.R. 2003). However, summary judgment is precluded if the  
18 non-moving party submits a statement of contested facts that create genuine issues  
19 of material fact. See id. Thus, in order to determine whether or not the non-moving  
20 party has complied with Local Rule 56, one must first look at the moving party’s  
21 statement of facts with regard to the issue, and then look at the non-moving party’s  
22 statement of contested facts to see if he has controverted those particular facts.  
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25 The defendants have submitted a statement of uncontested facts which  
26 complies with the spirit and letter of the anti-ferret rule. (Docket No. 41.) Plaintiff  
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3 has submitted a statement of contested and uncontested material facts which in part  
4 admits many of the movant's uncontested facts, but which also qualifies some of  
5 them, for the most part, in a conclusory fashion. (Docket No. 47.) Plaintiff's own  
6 statement of uncontested facts also contains statements which are conclusory.  
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8 Extensive discovery has been conducted. Plaintiff has failed to produce  
9 sufficient evidence to show that his conduct was a motivating factor in the adverse  
10 employment actions he alleges were taken against him. Plaintiff did provide proof  
11 that some actions were in fact taken against him, but failed to provide evidence that  
12 linked those actions to the denunciations made by him.

14 I find no substantial difference between this case and the previous one.  
15 Therefore, I adopt my report and recommendation in the case of Pérez-Ortiz, and  
16 attach the same. From defendants' statement of uncontested facts, it is clear that  
17 plaintiff cannot satisfy his burden of presenting sufficient evidence to show that his  
18 protected conduct was a motivating or substantial factor in any adverse employment  
19 action taken against him. Accordingly, defendants' motion for summary judgment  
20 is GRANTED. The case is dismissed in its entirety. The Clerk of Court is to enter  
21 judgment accordingly.

23 SO ORDERED

25 In San Juan, Puerto Rico, this 28<sup>th</sup> day of November, 2005.

27 S / JUSTO ARENAS  
28 Chief United States Magistrate Judge